

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA       )  
  )  
                  v.                                )       1:11-cr-00227-JAW  
  )  
LEVELL L. MATTHEWS                )

**ORDER ON DEFENDANT'S MOTION TO MODIFY SENTENCE PURSUANT  
TO 18 U.S.C. § 3582(c)(2)**

On September 26, 2014, a federal jury found Levell L. Matthews guilty of five federal crimes: (1) Count One, conspiracy to make false statements in an application to purchase firearms, a violation of 18 U.S.C. § 924(a)(1)(A), (2) Count Two, possession of a firearm by a felon, a violation of 18 U.S.C. § 922(g)(1), (3) Count Three, possession of another firearm by a felon, a violation of 18 U.S.C. § 922(g)(1), (4) Count Four, possession of a third firearm by a felon, a violation of 18 U.S.C. § 922(g)(1), and (5) Count Five, possession of marijuana, a violation of 21 U.S.C. § 844. *Jury Verdict Form* (ECF No. 124); *Second Superseding Indictment* (ECF No. 47). On February 12, 2013, this Court sentenced Mr. Matthews to seventy months incarceration on Counts One through Four and twelve months on Count Five, the sentence on Count Five to run concurrently with the sentence on Counts One through Four. *J.* (ECF No. 142). Mr. Matthews appealed the sentence and on May 16, 2014, the First Circuit Court of Appeals affirmed and on June 9, 2014, it issued its mandate. *Opinion of the Ct.* (ECF No. 164); *J.* (ECF No. 165); *Mandate* (ECF No. 163).

On November 4, 2014, Mr. Matthews filed a pro se motion to modify his sentence. *Mot. to Modify Sentence Pursuant to 18 U.S.C. [§] 3582(c)(2)* (ECF No. 167).

In his motion, Mr. Matthews observes that the United States Sentencing Commission promulgated Amendment 782, imposing “an across the board two-level reduction to the drug quantity table, and subsequently made Amendment 782 retroactively applicable.” *Id.* Mr. Matthews says that he “qualifies for the above referenced two-level reduction, and hereby respectfully moves the court to provide him the relief to his sentence appropriate to that two-level reduction.” *Id.* He notes that he has “successfully completed many educational classes while serving his sentence” and “has maintained a very satisfactory disciplinary record with has permitted him to be held at a federal prison camp with minimum security.” *Id.*

Unfortunately for Mr. Matthews, Amendment 782 does not offer him any relief from the seventy-month sentence. Amendment 782 lowers, as Mr. Matthews points out, the offense levels related to a defendant’s drug quantity. U.S. Sentencing Guidelines Manual App. C, Amendment 782 (2014); U.S. Sentencing Guidelines Manual § 1B1.10(d)(2014). The problem is that Mr. Matthews’ sentence was not based on the drug quantity tables. The Court calculated Mr. Matthews’ sentence under the advisory Guideline for the firearms counts, U.S.S.G. § 2K2.1, starting with the base offense level of 20 under § 2K2.1(a)(4)(A), because Mr. Matthews had previously been convicted of a controlled substance offense, increasing the base offense level two levels for the number of firearms, § 2K2.1(b)(1)(A), and four levels for possession of the firearms in connection with another felony offense. § 2K2.1(b)(6)(B). The total offense level was 26 and his criminal history was II, giving

Mr. Matthews a Guideline sentence range of 70 to 87 months. *Tr. of Proceedings* 41:1-19 (ECF No. 154) (*Sentencing Tr.*).

After taking into account the statutory factors under 18 U.S.C. § 3553(a), the Court imposed a sentence at the bottom of the Guideline range as calculated. *Sentencing Tr.* 42:11-49:16. Furthermore, the drug quantity in the marijuana possession count did not affect the Guideline calculations and the Court imposed a concurrent twelve-month sentence on the marijuana conviction. *J.* (ECF No. 142). The lower offense levels in the drug quantity tables, if they had been applicable at Mr. Matthews' sentencing, would have had no impact on his Guideline sentence range and the reduced Guideline penalties based on drug quantity do not reduce his sentence.

The Court commends Mr. Matthews for his educational progress and good behavior in prison and it hopes that he continues to live up to the promises he made during his allocution at the sentencing hearing. However, the Court is not authorized to reduce his sentence as requested.

The Court DENIES Levell L. Matthews' Motion to Modify Sentence Pursuant to 18 U.S.C. [§] 3582(c)(2) (ECF No. 167).

SO ORDERED.

Dated: November 12, 2014

/s/ John A. Woodcock, Jr.  
JOHN A. WOODCOCK, JR.  
CHIEF U.S. DISTRICT JUDGE

**Defendant (1)**

**LEVELL L MATTHEWS**

*TERMINATED: 02/12/2013*

represented by **LEVELL L MATTHEWS**

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*TERMINATED: 11/04/2014*

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